REME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1967.

No. 1345.

INTERNATIONAL SALT COMPANY,
Petitioner,

v.

THE STATE OF NEW JERSEY, on Behalf of Itself and All Others Similarly Situated, et al.,
Respondents.

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION.

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As has been pointed out in our petition (pp. 13-15) the result reached by the Court of Appeals herein was arrived at by the retroactive application of a "change" in the law contained in section 5(b) of the Clayton Act so as to revive petitioner's expired liability. Respondents in their Brief in Opposition to seek to sustain this result by the following statement:

> "[The] justification [for the rule against retroactive application] is that parties who honestly attempt to determine the existing limits of lawful business conduct and act within such limits should not later be penalized by a retroactive application of a change in the law which they could not foresee. That is not this case. On the contrary, at the time of the modification

> of a rule, if any, International had already violated the substantive law of this case. Its consent to entry of the decree in the government suit was nothing more than an attempt to avoid further expensive litigation against the United States and to minimize its potential liabilities." (Respondents' Brief in Opposition, p. 7)

The argument that the ordinary principle of law applicable here may appropriately be ignored in petitioner's case because it ". . . had already violated the substantive law of this case . . ." is a gross distortion of the record. Petitioner was *acquitted* by a jury after a five-week trial in the government criminal action in Minnesota.[1] The companion government civil action upon which respondents rely to press their claims was tried upon the record compiled in the criminal case, a record on the basis of which petitioner's *innocence* had already been established. It was at this stage that petitioner entered a consent decree hoping and expecting to put an end to further litigation. The importance of protecting petitioner's interest, as well as the government's interest in promoting consent decrees by not disturbing later the expectations of consent decree entrants, has been stressed in our petition (pp. 12-13). See also the Report on the Consent Decree Program of the Department of Justice, pages 7-10; *United States v. Western Electric Co., Inc.* (No. 17-49, D. N. J., 1968) (petition for certiorari filed, No. 1404, October Term, 1967); and the discussion in 81 Harv. L. Rev. 356, 400-407. No justification for specially penalizing petitioner and applying a "change" in the law retroactively to revive its liability can be found in respondents' erroneous statement that petitioner "had already violated the substantive law of the case." The result reached by the Court of Appeals in this case was

1. See petition, p. 5.

based simply upon a determination not to apply the principles declared in *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 377 F. 2d 776 (3 Cir. 1967), cert. granted, 88 S. Ct. 86 (1967); *Simpson v. Union Oil Co.*, 270 F. Supp. 754 (N. D. Cal. 1967); and *Lyons v. Westinghouse Electric Corp.*, 235 F. Supp. 526, 536-7 (S. D. N. Y. 1964) to this case. We think that determination was erroneous, and that for this reason, as well as for the other reasons set forth in our petition, the Court should review this case.

Respectfully submitted,

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